

# Exhibit A

**Barkin, Amanda**

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**From:** Hyland, Nicole  
**Sent:** Wednesday, March 22, 2023 5:32 PM  
**To:** Scott E. Gant - Boies, Schiller & Flexner LLP (sgant@bsfllp.com)  
**Cc:** Minkoff, Ronald; Barkin, Amanda  
**Subject:** Motion to withdraw - LR 83.7

Scott,

Based on our review of Minnesota District Court Local Rule 83.7, the only applicable grounds for BSF's withdrawal is subsection (c). We propose that you file a motion under LR 83.7(c) in which you simply state that you are seeking to withdraw at Sysco's request, because Sysco has terminated its relationship with BSF. As a result, BSF is mandated to withdraw under the Minnesota Rules of Professional Conduct and relevant case law. In addition, you may generally reference issues such as a breakdown in attorney-client relations. Please provide us with a copy of your submission before filing. Sysco reserves its right to submit a statement to the Court setting forth any information it deems relevant to a finding of "good cause" for withdrawal.

Separately, you indicated at today's court conference that BSF may file something either publicly or under seal responding to the underlying facts in Sysco's stay motion. We reiterate that BSF continues to be bound by its ethical obligations towards Sysco and we reserve all rights should BSF breach such obligations. To be clear, we do not consider sealing to excuse any such breaches.

Regards,

Nicole

**Nicole Hyland** | Frankfurt Kurnit Klein & Selz PC  
28 Liberty Street | New York, NY 10005  
t: (212) 826-5552 | f: (347) 438-2140 | [nhyland@fkks.com](mailto:nhyland@fkks.com)

Frankfurt Kurnit Professional Responsibility  
Blog: [professionalresponsibility.fkks.com](https://professionalresponsibility.fkks.com)

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# Exhibit B

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In Re: Pork Antitrust  
Litigation

File No. 21MD2998  
(JRT/JFD)

Minneapolis, Minnesota  
March 22, 2023  
2:41 P.M.

BEFORE THE HONORABLE JUDGE JOHN R. TUNHEIM

UNITED STATES DISTRICT COURT JUDGE

AND

HONORABLE MAGISTRATE JUDGE JOHN F. DOCHERTY

UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

**(STATUS CONFERENCE VIA VIDEO CONFERENCE)**

KRISTINE MOUSSEAU, CRR-RPR  
(612) 664-5106

APPEARANCES

For Direct Purchaser  
Plaintiffs:

Lockridge Grindal Nauen PLLP  
JOSEPH BRUCKNER, ESQ.  
100 Washington Avenue South  
Suite 2200  
Minneapolis, MN 55401

Pearson Simon & Warshaw  
BOBBY POUYA, ESQ.  
MICHAEL H. PEARSON, ESQ.  
DANIEL L. WARSHAW, ESQ.  
15165 Ventura Boulevard  
Suite 400  
Sherman Oaks, CA 91403

On behalf of the  
Consumer Indirect  
Plaintiffs:

Hagens Berman Sobol Shapiro  
SHANA E. SCARLETT, ESQ.  
RIO PIERCE, ESQ.  
ABIGAIL PERSHING, ESQ.  
BREANNA VAN ENGELLEN, ESQ.  
715 Hearst Avenue  
Suite 202  
Berkeley, CA 94710

Gustafson Gluek PLLC.  
DANIEL C. HEDLUND, ESQ.  
120 South Sixth Street  
Suite 2600  
Minneapolis, MN 55402

For the Commercial  
Indirect Purchaser  
Plaintiffs:

Cuneo Gilbert & LaDuca, LLP  
ALEC BLAINE FINLEY, ESQ.  
4725 Wisconsin Avenue NW  
Suite 200  
Washington, DC 20016

For the Commonwealth  
of Puerto Rico:

Hausfeld  
KYLE G. BATES, ESQ  
600 Montgomery Street  
Suite 3200  
San Francisco, CA 94111

For Dollar General  
DAPs:

Sperling & Slater  
ALBERTO RODRIGUEZ, ESQ.  
55 West Monroe Street  
Chicago, IL 60693

1	For Kroger DAPs:	Kenny Nachwalter WILLIAM J. BLECHMAN, ESQ. 1441 Breckell Avenue Suite 1100 Miami, FL 33131
2		
3		
4	For Topco DAPs:	Kaplan Fox & Kilsheimer LLP ROBERT N. KAPLAN, ESQ. 850 Third Avenue New York, NY 10022
5		
6	For Sysco:	Anthony Ostlund Louwagie Dressen & Boylan ARTHUR BOYLAN, ESQ. NICOLE HYLAND, ESQ. JOSEPH JANOSCHOSKI, ESQ. 90 South Seventh Street Suite 3600 Minneapolis, MN 55402
7		
8		
9		
10		
11		Cleary Gottlieb Steen & Hamilton LINA BENSMAN, ESQ. BRIAN BYRNE, ESQ. One Liberty Plaza New York, NY 10006
12		
13		
14		
15	For Deft Agri Stats, Inc.:	Hogan Lovells LIAM E. PHIBBS, ESQ. 555 13th Street NW Washington, DC 20004
16		
17	For Deft Clemmens Food Group:	Kirkland & Ellis, LLP MAX SAMELS, ESQ. 300 North LaSalle Chicago, IL 60654
18		
19		
20	For Deft Hormel Foods Corporation:	Faegre Drinker Biddle & Reath EMILY E. CHOW, ESQ. 90 South Seventh Street Suite 2200 Minneapolis, MN 55402
21		
22		
23		
24		
25		

1 For Deft JBS USA: Quinn Emanuel Urquhart & Sullivan  
2 SAMI H. RASHID, ESQ.  
3 DAVID B. ADLER, ESQ.  
4 51 Madison Avenue  
5 22nd Floor  
6 New York, NY 10010

7  
8 Spencer Fane LLP  
9 DONALD G. HEEMAN, ESQ.  
10 100 South Fifth Street  
11 Suite 1900  
12 Minneapolis, MN 55402

13 For Defendant  
14 Seaboard Foods, LLC: Stinson LLP  
15 WILLIAM THOMSON, ESQ.  
16 WILLIAM L. GREENE, ESQ.  
17 50 South Sixth Street  
18 Suite 2600  
19 Minneapolis, MN 55402

20 For Deft Smithfield: Gibson Dunn & Crutcher  
21 BRIAN EDWARD ROBISON, ESQ.  
22 2100 McKinney Avenue, Ste 1100  
23 Dallas, Texas 75201

24 For Deft Triumph Foods,  
25 LLC: Husch Blackwell  
CHRISTOPHER A. SMITH, ESQ.  
ABRAHAM JAMES SPRUNG, ESQ.  
JASON HUSGEN, ESQ.  
190 Carondelet Plaza  
Suite 600  
St. Louis, MO 63105

For Defendant Tyson  
Foods: Axinn Veltrop & Harkrider LLP  
TIFFANY RIDER ROHRBAUGH, ESQ.  
JAROD TAYLOR, ESQ.  
950 F Street NW  
7th Floor  
Washington, DC 20004

Also appearing: Boies Schiller Flexner  
SCOTT E. GANT, ESQ.  
1401 New York Avenue NW  
Washington, DC 20005

2:41 P.M.

(In open court via video conference.)

THE COURT: All right. Good afternoon, everyone. Sorry this took a while to get everyone noted this afternoon.

This is In Re: Pork Antitrust Litigation. It was originally 18-1776 and now MDL 21-2998. We have all of your names, having been noted beforehand, so they will be noted for purposes of the hearing. We won't go through that right now because that would probably take us another half hour.

So we're going to go right into the agenda. Judge Docherty is here as well. So we have a number of matters to go through. I think unless counsel has something else to discuss first, we will take up the Sysco motion to stay, and I will turn the microphone over to Judge Docherty.

MAGISTRATE JUDGE DOCHERTY: Good afternoon, everybody. First of all, is there anyone from the Boies Schiller firm on the call today?

MR. GANT: Your Honor, yes. Can you hear me, Your Honor?

MAGISTRATE JUDGE DOCHERTY: Yes, I can.

MR. GANT: Yes. This is Scott Gant from Boies



1 Schiller Flexner. I didn't make an appearance on the joint  
2 agenda and didn't plan to say anything, but I am on, Your  
3 Honor. I would be happy to answer any questions or address  
4 anything you would like me to.

5 MAGISTRATE JUDGE DOCHERTY: All right. On the  
6 5th of April, I'm going to be hearing the motion of Sysco  
7 for a 60-day stay as to them. That motion seems to me to  
8 be very, seems -- (inaudible)

9 COURTROOM DEPUTY: Judge Docherty, we're having  
10 some issues with your audio.

11 MAGISTRATE JUDGE DOCHERTY: Okay. Hold on. Is  
12 that better? Hello?

13 THE COURT: Talk a little bit more so we can hear  
14 you.

15 MAGISTRATE JUDGE DOCHERTY: Okay. So what I was  
16 saying was on the 5th of April, I'm going to be hearing  
17 Sysco's motion for a 60-day stay as to them to let them get  
18 new counsel, so that gets wound up with the situation  
19 that's developed between Sysco and its present counsel  
20 Boies Schiller.

21 There is a stipulation by which both Schiller and  
22 Sysco purport to part ways. There is a local rule  
23 governing withdrawal of counsel. It's local Rule 83.7.  
24 It's got three options for lawyers to withdraw from a case,  
25 and I've got an order ready to sign and docketed denying

1 the stipulation and directing the Boies Schiller firm to  
2 proceed under local Rule 83.7.

3 Now, this isn't just being formalistic. As I  
4 say, the motion to stay with Sysco is bound up with this,  
5 and all of the options under rule, local Rule 83.7 will  
6 give me more information on this very bare bones  
7 stipulation that's been filed, which basically just says  
8 we're agreeing to part company and we're reserving all of  
9 our respective defenses and claims.

10 There is a little bit more in the memorandum in  
11 support, but again, it's five or six pages, and most of  
12 what I know about the situation I've learned by going on  
13 Pacer and pulling the documents that have been filed in the  
14 Northern District of Illinois in support of a motion to  
15 vacate an arbitration award, which is very long and very  
16 fulsome. So that's step one.

17 Step two is clarifying the position of Matthew  
18 Austin from the Frankfurt firm. There is a footnote on the  
19 joint agenda saying we're in a limited capacity regarding  
20 Sysco's motion to stay. I do think that the Anthony  
21 Ostlund firm, but this isn't 100 percent clear to me, was  
22 on the MDL, and then when we stopped filing in that and  
23 started filing in 18CV1776, they don't seem to have made  
24 that transition.

25 So it's now clear to me that Anthony Ostlund, if

1       they made a general appearance, now make a limited  
2       appearance. I'm also not sure that a limited appearance,  
3       although it's contemplated by the Minnesota Rules of  
4       Professional Conduct, is something that can be done in  
5       federal court in a particular case, and I don't think they  
6       could let someone, for example, come in and say I'm just  
7       the discovery lawyer or I'm just the motions lawyer.

8               So I don't have a firm opinion on that at this  
9       point, but I am going to be asking for guidance or from the  
10      Anthony Ostlund firm and the Frankfurt firm; and thirdly  
11      and finally, I understand that some other parties want to  
12      either ask questions or make their views known about  
13      Sysco's motion.

14             And again, I will say that the local Rule 7.1  
15      does give you an avenue for doing that. The motion was  
16      filed on March the 10th. Responses to the motion were due  
17      on Friday of last week.

18             In light of the fact, though, that the hearing  
19      wasn't until the 5th of April, I'm happy to give people  
20      until the end of the week if they've got something to say  
21      about the Sysco motion. So that's more or less what I've  
22      got to say.

23             Mr. Gant, either today or tomorrow, pick one of  
24      the three options under local Rule 83.7 and file that.

25             MR. GANT: Yes. I've just pulled it up, Your

1 Honor, but I'm trying to listen carefully to what you're  
2 saying, so I haven't had a chance to read it.

3 MAGISTRATE JUDGE DOCHERTY: Okay.

4 MR. GANT: If I may just say a couple of things,  
5 Your Honor.

6 MAGISTRATE JUDGE DOCHERTY: Yes.

7 MR. GANT: That stipulation was drafted by the  
8 counsel for Sysco from the Frankfurt firm, so we -- and  
9 they were eager to have us withdraw. So we filed that at  
10 their request, but we will confer and then file something  
11 in conformity with the local rule that you've identified.

12 MAGISTRATE JUDGE DOCHERTY: Okay.

13 MR. GANT: And I just want to say, Your Honor,  
14 and I assume that both you and Judge Tunheim will  
15 appreciate this, that with respect to Sysco being a former  
16 client, we have ethical constraints on what we can say  
17 unless Sysco's counsel on this call wants to free us from  
18 those ethical obligations.

19 Even with respect to a former client, we're  
20 limited in what we can say. We did not respond to the  
21 petition, the material that you were referring to and  
22 obviously consulted, which make accusations against me and  
23 my firm.

24 But we just want to say what we've said publicly  
25 before, which is that we adamantly deny the accusations

1 that are made against us of ethical improprieties and  
2 dispute some of the factual, proposed factual predicates  
3 underlying it.

4 I don't know, Your Honor, if you're asking for or  
5 wanting us to submit anything on it. I didn't see it as  
6 directly relevant to the stay motion. And of course as you  
7 also know, Your Honor, I also wear the hat, still having a  
8 client, separate client Armory in the case, which has taken  
9 no position on the stay motion.

10 But if it's important for the Court to hear from  
11 us with respect to the underlying allegations, we of course  
12 will submit something and hope that Sysco will allow us to  
13 speak freely in that filing.

14 MAGISTRATE JUDGE DOCHERTY: All right.

15 Mr. Boylan or Ms. Hyland, anything to say on  
16 that?

17 MS. HYLAND: Your Honor, this is Nicole Hyland  
18 representing Sysco as professional responsibility counsel.

19 First, that stipulation was jointly drafted by us  
20 and Boies Schiller. It went through several revisions, so  
21 I'm not sure. I disagree with that characterization, but  
22 we'll leave that.

23 I don't know what information or what license or  
24 agreement Mr. Gant is asking for in terms of waiving  
25 rights. I believe his rights to respond to the extent that

1 he needs to respond and Your Honor wishes to give him an  
2 opportunity to respond are provided for in the rules. So  
3 Sysco expects Boies Schiller to comply with its ethical  
4 obligations under the rules.

5 MAGISTRATE JUDGE DOCHERTY: All right. Here's  
6 where I'm coming out on this. As I say, there is a motion  
7 coming up that is going to occur on the 5th of April. I  
8 don't know what it is that I don't know and that might be  
9 important to that motion.

10 This all seems -- this all is intertwined, and so  
11 to the extent the information can be provided, I am going  
12 to be grateful for it and take it in.

13 As to your concerns, Mr. Gant, I hear you. I  
14 understand that these were the filings from one side that I  
15 read. I'm accustomed to keeping an open mind until I see  
16 both sides. I understand that you may be operating under  
17 some restraints in being able to respond.

18 I also wanted to be transparent that I am, in my  
19 desire to figure out what is going on in this case,  
20 consulted records, public records in another federal  
21 District Court. So that's all that was going on in that.

22 I believe at this point that we will be able to  
23 hear from those individuals who wish to speak on the Sysco  
24 motion and would like to ask questions about the Sysco  
25 motion, but again, I will point out that expires by

1 midnight on Friday, and I presume the writing will be  
2 considerable, and so I have entered an order kind of  
3 generally extending the time to respond until then.

4 So if there is anyone, so we don't get multiple  
5 people speaking at once, that wants to raise or anyone who  
6 wishes to be heard on Sysco's motion or ask questions about  
7 it.

8 MR. GANT: Your Honor, it's Mr. Gant again.

9 MAGISTRATE JUDGE DOCHERTY: All right.

10 MR. GANT: Again, as you can understand from my  
11 prior statement, we have a former client that we believe  
12 has made unfounded accusations of ethical violations. I'm  
13 walking on eggshells a bit here, and Ms. Hyland didn't give  
14 me any comfort.

15 We did not plan to put in a response on Sysco's  
16 stay motion, either for our client Armory, which takes no  
17 position, or on behalf of the firm because we didn't see it  
18 as directly relevant. We're not a party to the motion as  
19 the law firm, obviously.

20 What I want to make sure I'm understanding is, if  
21 the Court believes it's important for the Court to hear  
22 from us to address the underlying allegations and  
23 accusations made against the firm, we will do that or try  
24 and do that, but make sure that that's done in a way that  
25 Sysco is not going to turn around and say we violated

1 ethical obligations to Sysco by filing that.

2 So if Your Honor wants us to submit that, I would  
3 appreciate, you know, that that's clear on the record that  
4 we are responding to a court request or directive, and  
5 we're happy to do that.

6 If you're just saying we can do it, but you don't  
7 care whether we do it, then that's a different matter. We  
8 probably will not submit something.

9 MAGISTRATE JUDGE DOCHERTY: Mr. Gant, the more  
10 information that I can have about what is happening here,  
11 the better job I feel obligated to do on the Sysco stay  
12 motion.

13 MR. GANT: I appreciate that.

14 MAGISTRATE JUDGE DOCHERTY: Excuse me?

15 MR. GANT: I'm sorry. I thought you were  
16 finished.

17 I appreciate that. Go ahead.

18 MAGISTRATE JUDGE DOCHERTY: So that's just sort  
19 of setting the stage. Therefore, anything that you believe  
20 you can tell me without violating ethical rules I will be  
21 happy to receive. If the answer is, I can't tell you  
22 anything without violating ethical rules, I'll accept that.

23 So I have to leave it in your court, and I have  
24 to keep the guidance general, but I will take in whatever  
25 you believe in the exercise of your professional judgment



1       you can provide me.

2               MR. GANT: And, Your Honor, I don't want -- it's  
3       your hearing to run, but if Ms. Hyland is willing to commit  
4       on the record that Sysco is not going to argue that we  
5       violated some ethical commitment to Sysco by making a  
6       filing to answer on Your Honor's statement, I would very  
7       much appreciate that because I am all in favor of your  
8       hearing all the facts.

9               MS. HYLAND: Your Honor, given the conduct up  
10      till now, I simply cannot give Boies Schiller free rein to  
11      say whatever it wants publicly at the risk of further  
12      violations of its fiduciary duties.

13              Boies Schiller can get advice from its own ethics  
14      counsel as to what it's permitted to say. I'm not its  
15      ethics counsel, and I'm not waiving confidentiality for my  
16      client.

17              MR. GANT: Just to be clear, we would be happy to  
18      file something under seal, Your Honor. So if Ms. Hyland's  
19      concern is about the public seeing things, we are happy to  
20      file under seal as long as you permit us to do that.  
21      Again, we're eager for all the facts to come out and for  
22      you to have all the facts, Your Honor.

23              MAGISTRATE JUDGE DOCHERTY: You are asking for  
24      assurances I can't give you. This is a matter for your  
25      professional judgment, and all I can do is repeat again

1       that I'm happy to receive whatever you can provide.

2               MR. GANT: May we file something under seal, Your  
3 Honor?

4               MAGISTRATE JUDGE DOCHERTY: Yes.

5               MR. GANT: Thank you.

6               MAGISTRATE JUDGE DOCHERTY: So I believe that  
7 that's it for at least for this status conference on Sysco.  
8 Boies Schiller --

9               MS. HYLAND: Apologies. May I ask a question  
10 about one of the things that you just said?

11              MAGISTRATE JUDGE DOCHERTY: Yes.

12              MS. HYLAND: You asked us to clarify our role as  
13 limited counsel.

14              MAGISTRATE JUDGE DOCHERTY: Yes, I did.

15              MS. HYLAND: In a written submission?

16              MAGISTRATE JUDGE DOCHERTY: That would probably  
17 be best as it is precise, to get something in on that.

18              MS. HYLAND: So when would you like that?

19              MAGISTRATE JUDGE DOCHERTY: Tomorrow or the next  
20 day.

21              MS. HYLAND: Can we say the same deadline of  
22 midnight Friday as the other submissions?

23              MAGISTRATE JUDGE DOCHERTY: Yes.

24              MS. HYLAND: Thank you.

25              MAGISTRATE JUDGE DOCHERTY: All right. Just to

1 sum up before we move on, Boies Schiller will seek to  
2 withdraw as counsel for Sysco pursuant to Rule 83.7, and I  
3 will issue an order later today denying the stipulation.

4 Anthony Ostlund and the Frankfurt firm will file  
5 something by midnight Friday clarifying what they mean by  
6 "a limited appearance."

7 Persons or parties wishing to weigh in for or  
8 against Sysco's motion will do so by midnight on Friday, by  
9 written order extending the deadline for responding which  
10 will be entered later this afternoon.

11 Anything further on this?

12 MR. GANT: No, Judge Docherty. Thank you. This  
13 is Mr. Gant. Thank you.

14 MAGISTRATE JUDGE DOCHERTY: Okay. Thank you all  
15 very much.

16 Judge Tunheim?

17 THE COURT: All right. Thank you, Judge  
18 Docherty, and all.

19 The next item on the agenda was a hearing date  
20 for the Consumer Indirect Purchaser Plaintiffs' motion for  
21 final approval of settlement with Smithfield. I think that  
22 is set now for April 3rd.

23 So nothing further we need to discuss here; is  
24 that correct?

25 MS. VAN ENGELLEN: That's correct, Your Honor.

1 Thank you.

2 THE COURT: All right. Okay. Depositions, is  
3 there any update anyone wishes to give? It looks like  
4 they're proceeding, the problems with the Canadian court  
5 and the deposition of the packing company.

6 Any update on depositions anyone wants to give,  
7 any problems, issues that we need to address today?

8 MS. PERSHING: This is Abigail Pershing, Your  
9 Honor, on behalf of plaintiffs. There is nothing beyond  
10 what is included in the joint report that we need to  
11 discuss today.

12 MR. SAMELS: This is Max Samels for defendants.  
13 I think we are in a similar position with the Sioux-Preme  
14 and USDA depositions. We have nothing more to discuss.

15 MR. TAYLOR: Jarod Taylor --

16 THE COURT: I am sorry. Go head.

17 MR. TAYLOR: I apologize, Your Honor. Jarod  
18 Taylor for the Tyson defendants.

19 The only update not included here is just that  
20 the British Columbia court has set a second hearing on the  
21 deposition of Sumio Matsumoto for June 7th.

22 THE COURT: June 7th. Okay. So that's a  
23 decision whether to order the deposition of Matsumoto,  
24 right?

25 MR. TAYLOR: That's a hearing on whether to

1 permit that deposition to proceed, correct.

2 THE COURT: All right. Okay. Anyone else?

3 Okay. It looks like the next issue on trial  
4 exhibits is really not anything necessary to discuss today.  
5 That might be ripe for further discussion at our next  
6 status conference; is that correct?

7 MR. TAYLOR: This is Jarod Taylor for defendants,  
8 Your Honor. That is correct from our perspective.

9 MR. POUYA: Bobby Pouya for the class plaintiffs.  
10 That's correct as well from our perspective.

11 THE COURT: Okay. Good. All right. So the  
12 Direct Action Plaintiffs' consolidated complaint issue I  
13 think is next on the agenda. I don't have it on my --

14 MR. KAPLAN: We didn't, Your Honor. Robert  
15 Kaplan.

16 We did not put that on the agenda. We are  
17 willing to discuss it if Your Honor would like.

18 THE COURT: Yeah. I wanted to discuss it a  
19 little bit just to make this a little bit clearer. There  
20 is a motion to dismiss the Direct Action Plaintiffs'  
21 complaint, but there is no response that I have seen yet on  
22 the record from Direct Action Plaintiffs; is that correct?

23 MR. KAPLAN: No. We have filed a response, Your  
24 Honor.

25 THE COURT: You have now. Okay.

1 MR. KAPLAN: On the motion to dismiss the  
2 consolidated amended complaint. I don't have the ECF  
3 number, but it was filed.

4 THE COURT: We're not seeing it.

5 MR. KAPLAN: I will locate it and re-file it.  
6 Would that be appropriate?

7 THE COURT: Yeah. That's perfectly fine. It may  
8 be that we're just missing it, too. It's a crowded docket.  
9 So all right.

10 MR. KAPLAN: I will look for the ECF number. If  
11 I have that, I will tell Ms. Arent the ECF number. If not,  
12 we will re-file it.

13 THE COURT: All right. That sounds good,  
14 Mr. Kaplan. Thank you.

15 There was some suggestion about waiting to  
16 address the motion until the summary judgment briefing is  
17 due, which is quite a ways away. Is that an issue anyone  
18 wished to discuss?

19 MR. KAPLAN: No, Your Honor.

20 THE COURT: Okay. I think we will just move this  
21 along and get this on for a hearing as soon as everything  
22 is ready to go, and we will prioritize that.

23 Okay. So I think Triumph has filed a motion to  
24 alter, amend, supplement its answer. Judge Docherty, do  
25 you want to handle that?

1 MAGISTRATE JUDGE DOCHERTY: Yes. The motion has  
2 been filed I believe under local Rule 7.1. The responses  
3 are due today. We have set the hearing on for the 6th of  
4 April after receiving the responses. After they are filed,  
5 I will go ahead and make a decision whether to let Publix  
6 back in or not and let the parties know that.

7 At least with Triumph's filings, it looks  
8 relatively straightforward, but there is nothing from the  
9 other side at this point.

10 MR. KAPLAN: Your Honor, the DAPs take no  
11 position, Your Honor. We're not going to oppose it or  
12 endorse it. Since it violated a court order, a date, and  
13 if the Court wants to accept it, that's fine with us. We  
14 don't take any position on it.

15 So we do not plan to file any papers unless Your  
16 Honor would like us to.

17 MAGISTRATE JUDGE DOCHERTY: I don't need anyone  
18 to send anything.

19 All right. Thank you.

20 THE COURT: All right. Anything else anyone  
21 wishes to raise today? I think those are the issues we  
22 wished to raise from the Court, unless you see something  
23 else, Judge Docherty.

24 MAGISTRATE JUDGE DOCHERTY: I do not. Thank you.

25 THE COURT: Any counsel wish to raise any other

1 issue today at our status conference?

2 All right. Let's at least set a target for our  
3 next status conference, which would be sometime toward the  
4 middle to end of April.

5 Heather, I'm looking at you.

6 COURTROOM DEPUTY: Tuesday, April 18th at 11:00.

7 THE COURT: That's not a good date.

8 COURTROOM DEPUTY: I'm sorry. That's not a good  
9 date.

10 THE COURT: Later that week is fine.

11 **(Off-the-record discussion.)**

12 COURTROOM DEPUTY: April 20th at 10:00 a.m.

13 MAGISTRATE JUDGE DOCHERTY: Are afternoons an  
14 option? My mornings are busy.

15 THE COURT: Early afternoon would work.

16 COURTROOM DEPUTY: How about one o'clock on the  
17 20th?

18 MAGISTRATE JUDGE DOCHERTY: Yes. Thank you.

19 THE COURT: One o'clock Central Time, Central  
20 Daylight Time now, on the 20th.

21 Is that the date? I am sorry. What's the date?

22 COURTROOM DEPUTY: Yes, Your Honor. April 20th.

23 THE COURT: April 20th.

24 COURTROOM DEPUTY: At 1:00.

25 MR. KAPLAN: That's fine, Your Honor.



1 THE COURT: All right. Sounds good. If there is  
2 nothing else for today, we will be in recess here and look  
3 forward to our hearing next month.

4 Thank you, everyone.

5 MR. KAPLAN: Thank you, Your Honor.

6 **(Court was adjourned.)**

7 \* \* \*

8 I, Kristine Mousseau, certify that the foregoing  
9 is a correct transcript from the record of proceedings in  
10 the above-entitled matter.

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14 Certified by: s/ Kristine Mousseau, CRR-RPR  
15 Kristine Mousseau, CRR-RPR  
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KRISTINE MOUSSEAU, CRR-RPR  
(612) 664-5106